

"The phrase 'out of' the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. . . . An injury arises 'out of' employment if it arises out of the nature, conditions, obligations and incidents of the employment." Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973); Angleton v. Starkan, Inc., 250 Kan. 711, 828 P.2d 933 (1992).

Claimant alleges that on May 12, 1994, while using a desk computer, she felt a pop in her back as she turned to get out of her chair. This injury was reported to claimant's supervisor and she was referred to the company doctor for treatment. Respondent relies upon the case of Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980) in support of its claim that claimant's condition did not arise out of her employment.

Respondent's reliance upon Martin in alleging this claim did not arise out of and in the course of claimant's employment is misplaced. In Martin the claimant drove his truck to work. As he was getting out of this truck he twisted and felt a sharp pain in his back and down the left leg. The activity by Martin in the parking lot was not part of his job responsibility and the decision by the Court of Appeals denying benefits was understandable under the circumstances. In this case, claimant's activity of arising from her chair and turning, were all directly related to the performance of her job duties. The Appeals Board finds claimant did suffer personal injury arising out of her employment.

Respondent also points to the new language of K.S.A. 44-508(e) which denies compensation to a claimant should the claimant suffer disability as a result of "the natural aging process or by the normal activities of day-to-day living."

Again it must be stressed the activity of leaving a chair and reaching for something at a work station, both physical activities in question, are directly related to her job and would not constitute either the natural aging process or a normal activity of day-to-day living. It has been unsuccessfully argued in the past to the Appeals Board that the normal activity of day-to-day living can cover many physical motions encountered on the job. This argument failed in the past and fails at this time as well. The Legislature did not intend for the normal activities of day-to-day living to be so broadly defined as to include injuries suffered at work.

The Appeals Board finds the language of K.S.A. 44-508(e) is not applicable to the current factual circumstances and finds claimant has proven by a preponderance of credible evidence her entitlement to benefits in this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard, dated November 2, 1994, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Robert W. Harris, Attorney at Law, Kansas City, KS
H. Wayne Powers, Attorney at Law, Overland Park, KS
Steven J. Howard, Administrative Law Judge
George Gomez, Director